

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

_____)	
In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
_____)	
)	
Petition of SBC Communications, Inc.)	
for Forbearance from the Application of)	WC Docket No. 04-29
Title II Common Carrier Regulation to)	
IP Platform Services)	
_____)	

REPLY COMMENTS OF CTC COMMUNICATIONS CORP.

CTC Communications Corp. (“CTC”) supports the Commission’s policy of imposing only minimal regulatory burdens on IP-enabled services and providers of such services that lack market power over network-layer facilities. CTC also agrees that the Commission has ample authority, under the Supremacy Clause and the Communications Act, to assert its jurisdiction over the regulation of IP-enabled service and to preempt inconsistent state regulation.

In carrying out that policy and exercising that authority, however, the Commission must ensure that IP-enabled service providers generally, and Voice-over-Internet-Protocol (“VOIP”) providers in particular, have non-discriminatory access to the facilities, services and other resources they need if they are to compete effectively in the marketplace. These include, but are not limited to, full use of North American Numbering Plan (“NANP”) numbering resources and access to services and network elements mandated under sections 251 and 271 of the Communications Act. The Commission’s rules should not restrict a VOIP provider’s ability to obtain other interconnection arrangements from incumbent local exchange carriers (“ILECs”),

including, but not limited to, switched access services. Failure to provide such flexibility in service architectures could result in irreparable harm to VOIP providers, such as CTC, that have relied on section 251 local interconnection arrangements and access to unbundled network elements (“UNEs”) in nearly a dozen markets for the past several years for the purpose of routing VOIP traffic through the public switched telephone network (“PSTN”).

The issues identified in these Comments, which are not expressly raised in the Notice of Proposed Rulemaking (“NPRM”), should be made the focus of a Further NPRM and should be resolved before final decisions concerning the regulatory status of VOIP services are made.

I. BACKGROUND

CTC is both a competitive local exchange carrier (“CLEC”) and a provider of advanced, integrated IP-enabled services. CTC’s end user customers access CTC’s VOIP network through high capacity loops that terminate to ILEC collocation arrangements. VOIP traffic originating and terminating from and to CTC customers who subscribe solely to CTC’s voice products is converted between time-division multiplexing (“TDM”) and packets through voice gateways located at the edge of CTC’s network. CTC also has a converged service offering, under which customers have the capability of sending data, Internet and voice services over the same high-capacity loop. Customers subscribing to CTC’s converged product offerings must have an integrated access device (“IAD”) deployed on their premises. For these customers, the point of conversion from TDM to packets and *vice versa* occurs at the IAD. VOIP traffic is exchanged with the PSTN through section 251 local interconnection arrangements and is converted between TDM and packets before reaching or leaving its network at the voice gateways.

Since 2000, when CTC first integrated its VOIP network with the PSTN through section 251 local interconnection and Feature Group D access arrangements with ILECs, CTC has relied upon NXX Code assignments from the North American Numbering Plan Administrator

(“NANPA”) for use by its local exchange customers. CTC also has utilized the SS7 signaling network, purchased UNE loops and transport facilities that terminate to ILEC collocation arrangements, participated in local number portability, ported numbers of local dial tone end users both on and off its network, and relied on industry identifying codes such as Operating Company Numbers (“OCNs”) and Carrier Identification Codes (“CICs”). Further, CTC has both billed and paid access charges for the exchange of its traffic with other carriers, and has participated in Universal Service programs, providing discounts to schools and libraries served by CTC’s VOIP network. In many respects, therefore, CTC has provided exclusively IP-enabled services in competition with circuit-switched voice services providers.

CTC’s principal concern in this proceeding is that the regulatory classification of VOIP services must not jeopardize CTC’s ability to maintain the service architecture that has served its consumers well. Accordingly, the Commission should exercise its interstate jurisdiction over VOIP services to confirm that VOIP service providers, including VOIP service providers that are certificated and providing service as CLECs, will continue to have access to needed services and resources regardless of the regulatory classification of the services that they provide.

II. THE COMMISSION HAS AMPLE AUTHORITY TO REGULATE VOIP SERVICES AND PREEMPT INCONSISTENT STATE REGULATION

As the comments in this proceeding overwhelmingly demonstrate, VOIP services are inherently interstate, whether those services are analyzed under the end-to-end or mixed-use analysis, and therefore are subject to this Commission’s “interstate or foreign” jurisdiction under the Communications Act.¹ As the comments also show, the Commission has the authority to preempt inconsistent state regulation of those services. The Commission should exercise that

¹ See Verizon Comments at 31-42; Level 3 Comments at 13-18; Cablevision Comments at 11-12; BellSouth Comments at 10-13; Covad Comments at 18-19. All comments cited in these Reply Comments were filed on May 28, 2004, and have been short cited.

authority where specific state regulations have the effect of frustrating the Commission's pro-competitive policies and Congress's clear statement, as set forth in section 230 of the Telecommunications Act of 1996, of the "policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation"²

As the comments also make clear, however, state regulation can and should play a continuing, useful role where such regulation promotes the congressional policy of unfettered competition. Covad Communications, for example, points out that "there will always be a continuing role for state commissions under the 1996 Telecommunications Act in overseeing the conditions for local competition in their states, including administering the Act's local competition provisions"³ Similarly, Cox Communications points out that "the states [should] have a central role in dispute resolution and enforcement, even if state jurisdiction does not extend to substantive regulation of . . . IP-enabled services."⁴ CTC agrees with these comments. The Commission should exercise its preemption authority decisively but sparingly, and should not deprive the states of their important role in ensuring competitive parity in local markets.

III. VOIP SERVICE PROVIDERS MUST HAVE DIRECT ACCESS TO NANP AND OTHER INDUSTRY RESOURCES

Under the Commission's current rules, information service providers are generally not eligible for direct assignment of telephone numbers because they cannot "provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state

² 47 U.S.C. § 230(b)(2).

³ Covad Comments at 18; *see also* Bend Broadband Comments at 62.

⁴ Cox Comments at 14.

certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide [local exchange] service in the area in which they seek numbering resource[s].”⁵ Unless amended, or unless the Commission otherwise determines that certain methods of delivery of VOIP services constitute a telecommunications service, this rule may prevent VOIP providers from obtaining direct access to NANP resources. The rule also presents a risk that if a CLEC’s IP-enabled services is subsequently classified by the Commission as an information service, the NANPA will refuse to furnish telephone numbers directly to that LEC on the ground that VOIP services are not within the scope of the common-carrier telecommunications services authorized by the LEC’s state certifications. The inability of a carrier to obtain number resources directly from the NANPA could preclude a carrier from offering local number portability, because local number portability is premised upon local routing numbers (“LRNs”) that are designated by carriers from their assigned NXX codes. As SBC’s comments point out, “the Commission’s original rules were never intended to restrict full access to numbering resources by service providers who are willing and able to use NANP resources to serve customers.”⁶ To preclude these results, the Commission should confirm the right of VOIP providers to secure NANP resources. Similarly, VOIP providers must be guaranteed access to the full array of codes required for the provisioning of voice telecommunications services by means of the PSTN and SS7 signaling networks. Such codes include, but should not be limited to, Carrier Identification Codes (“CICs”), Operating Company Numbers (“OCNs”), and Revenue Accounting Office (“RAO”) Codes.

⁵ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7615 (2000); *see also* 47 C.F.R. § 52.15(g)(2)(i).

⁶ SBC Comments at 87.

IV. ILECS SHOULD BE REQUIRED TO INTERCONNECT WITH VOIP SERVICE PROVIDERS

Regardless of the regulatory classification of specific VOIP services, the Commission should ensure regulatory parity among comparable offerings by confirming that VOIP services using the PSTN are entitled to interconnection and access to network elements at rates and charges comparable to those for interconnection under section 251.

To the extent particular VOIP services are classified as telecommunications services, the decision to require interconnection will follow automatically from the provisions of sections 251 and 252 of the Act. As Cox Communications and other commenters have pointed out, however, the Commission also has ample authority to extend the same interconnection rights to VOIP service providers whose services are classified as information services. As Cox notes, while section 251 created a new set of interconnection rights limited to telecommunications service providers, that section “explicitly did not affect the Commission’s existing authority” to order interconnection under section 201 of the Act.⁷ And the Commission’s authority under section 201 can be supplemented, if needed, by the plenary authority of the “Section 4(i) ancillary jurisdiction to adopt rules to fulfill [the Commission’s] Title II responsibilities”⁸

Accordingly, to the extent the Commission decides to classify VOIP as an information service, it should confirm that providers of those services are entitled to comparably efficient interconnection and access to network elements at rates comparable to those charged for interconnection under section 251. At the same time, the Commission should flatly reject the demands, made in the RBOCs’ comments, that those companies be relieved even of their

⁷ Cox Comments at 25, n.37.

⁸ *Id.* at 25.

longstanding obligations under the *Computer III* rules.⁹ Lastly, to ensure a level playing field between CLECs and information service providers, any relevant performance measurements and remedies imposed upon ILECs with respect to services purchased by CLECs should also be imposed upon ILECs for comparable services provided to information services providers.

V. VOIP PROVIDERS SHOULD BE ALLOWED TO PARTICIPATE IN UNIVERSAL SERVICE AND RELATED PROGRAMS

As noted earlier, CTC already has provided discounted services under universal service programs and looks forward to continuing to participate in the expansion of advanced services to eligible institutions. In order to comply with the congressional mandate to encourage the growth of Internet-based and computer-based services, the Commission should ensure that VOIP providers, like traditional telephone companies, are eligible to participate in universal service programs, including services provided to schools and libraries. To the extent statutory changes are required to affect this pro-competitive policy, CTC urges the Commission to support those changes.¹⁰

⁹ Verizon Comments at 5-31; BellSouth Comments at 15-23; SBC Comments at 41-42.

¹⁰ See Bend Broadband Comments at 59.

VI. CONCLUSION

Asymmetric deregulation of VOIP services could undermine service providers, such as CTC, that have invested in network infrastructures that combine the best features of new and traditional technologies and service arrangements. Accordingly, CTC requests that the Commission reach no definitive conclusions concerning VOIP regulation until a Further or Supplemental NPRM devoted to the issues raised in these Comments, has been concluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa Rollins, do hereby certify that I have on this 14th day of July, 2004, had copies of the foregoing **REPLY COMMENTS** delivered to the following via electronic mail:

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